

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 89-64-E - ORDER NO. 89-166
FEBRUARY 21, 1989

IN RE: Berkeley Electric Cooperative, Inc.,)	
)	
)	
Petitioner,)	
)	
vs.)	ORDER
)	
South Carolina Electric & Gas Company,)	
)	
Respondent)	
)	

On January 27, 1989, Berkeley Electric Cooperative, Inc. (Berkeley) filed a Petition for Rule to Show Cause in the above captioned docket with the Public Service Commission of South Carolina (the Commission). On February 8, 1989, South Carolina Electric & Gas Company (SCE&G) filed a Motion to Dismiss. The Commission heard oral arguments from counsel for Berkeley, SCE&G and the Intervenor, the Electric Cooperatives of South Carolina, Inc. (the Cooperatives) on these motions on February 15, 1989.

Berkeley alleged that it was exclusively assigned by law certain territory located on Johns Island, Charleston County, South Carolina by this Commission on or about August 28, 1973. This land was annexed into the City of Charleston at some point after June 6, 1984. Berkeley claims that SCE&G has not filed an Application for

a Certificate of Public Convenience and Necessity as required by S.C. Code Ann. §58-27-1230 (1976) and Commission Regulation 103-304 to serve any of the area in question on Johns Island. Further, Berkeley alleges that SCE&G has acquired certain easements in the area in question in violation of that rule and that statute. Berkeley alleges that SCE&G has commenced clearing of a right of way and intends to construct electrical facilities in and across the assigned area of Berkeley for the purpose of providing electric service to that area. SCE&G also, according to Berkeley, has applied to the United States Army Corps of Engineers and the South Carolina Coastal Council for authority to construct electric distribution poles in the territorial marshland and waters of the State of South Carolina. The area in question, according to Berkeley, has been previously assigned to Berkeley. According to Berkeley, the actions of SCE&G constitute an effort to unlawfully take the property of Berkeley in direct violation of Berkeley's rights under S.C. Code Ann. §58-27-650 (1976), as amended, and are in direct violation of Commission Order No. 17,176 issued in Docket No. 17-010 on October 17, 1973 concerning the assignment of territory on Johns Island. Berkeley claims that the actions of SCE&G will cause permanent and irreparable damage to Berkeley for which Berkeley will have no adequate remedy at law. Berkeley requests that the Commission issue an Order requiring SCE&G to cease and desist construction or operation or negotiating to obtain easements or rights of way until the Commission, may, after hearing, make such order and prescribe such terms and conditions as

are just and reasonable. Also, Berkeley asks the Commission to prevent the unreasonable interference with its service and to prevent injury to Berkeley by prescribing such terms and conditions as are just and reasonable. Berkeley also requests that the Commission order SCE&G to pay a penalty for each day that it continues to be in violation of the Commission Order and to pay the attorney's fees and costs incurred by Berkeley.

The Commission finds that the requests of Berkeley for a Cease and Desist Order, for penalties, and attorneys' fees should be denied. Berkeley Electric Cooperative, Inc. has not shown that it will suffer irreparable harm by the actions of South Carolina Electric & Gas Company. SCE&G obtained the proper easements and rights of way to begin construction and the Commission will rule on the merits of this case after a full evidentiary hearing. The Commission will hold a public hearing on April 26, 1989 at 10:30 a.m. If the Commission ultimately rules against SCE&G, SCE&G could be ordered to remove any facilities it has put into place, pursuant to S.C. Code Ann. §58-27-1280 (1976), as amended.

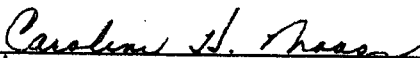
The Commission finds that the Motion to Dismiss should be denied also. SCE&G, in its Motion to Dismiss, asks that the case be dismissed on the basis of the recent South Carolina Supreme Court decision of Blue Ridge Electric Cooperative, Inc. v. The City of Seneca, Opinion No. 22958, filed February 6, 1989. According to SCE&G, under the holding of that case, Berkeley is not entitled to any relief in this proceeding. Berkeley and the Cooperatives argued that this case does not apply in the instant situation. The

Commission denies the Motion to Dismiss and will hear all parties on the merits of the case on April 26, 1989.


IT IS THEREFORE ORDERED:

1. That Berkeley's Petition for a Cease and Desist Order and SCE&G's Motion to Dismiss are hereby denied.
2. That a public hearing will be held on April 26, 1989.
3. That this Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:


Chairman

ATTEST:


Executive Director

(SEAL)